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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/741,794	12/19/2003	Leslie Leah Anderson	Anderson, et al	5579

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EXAMINER

POLLICOFF, STEVEN B

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/741,794	Applicant(s) ANDERSON ET AL.	
	Examiner Steven B. Pollicoff	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/18/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating

obviousness or nonobviousness.

Claims 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petrilli et al., (U.S. Pat. No. 5,921,388,) in view of Huddle (U.S. Pat. No. 4,036,244) and Gupta et al., (U.S. Pat. No. 6,672,323).

As to claim 15, Petrilli et al., discloses a fire shelter storage system comprising a fire shelter unit (see Figure 4), an outer protective pouch (see Petrilli, Figure 1, (10)), a cover (28), a releasable fastener (36,38), and a handle (42). Petrilli also discloses that the fire shelter has an opening in the floor (Column 1, lines 16-18). Petrilli et al., does not disclose a fire shelter unit with an oval floor or a canopy that is semi-capsular in shape or that the semi-capsular canopy has a main body shaped like a half cylinder and

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two ends shaped like $\frac{1}{4}$ spheres. However, Huddle discloses a shelter with a half cylindrical main body and $\frac{1}{4}$ spherical ends (Huddle Fig 1 and 2) that aid in minimizing undue strain from carrying heavy loads of snow, ice and wind (Huddle, Column 1, lines 20-27). Gupta et al., discloses a multipurpose self-erecting structure having an oval floor and a semi-capsular shape (see Gupta, Figure 1) for the purposes of being used as a portable shelter or tent that provides for self-erecting capability, small storage in portable containers, easy transport, and desirable stability on uneven surfaces when the structure is in use (Page 2, Column 2, 1st Full Paragraph). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Petrilli et al., invention to include a shelter with an oval floor and a semi-capsular shape having a main body shaped like a half cylinder and two ends shaped like $\frac{1}{4}$ spheres, as taught by Gupta and Huddle, to increase the utility of the shelter and further protect the user from being exposed to harmful natural elements.

Petrilli et al., also discloses that the fire shelter unit is folded and sealed in a protective envelope and that the handle is attached to the protective envelope to be separate from the emergency fire shelter (see Figure1). Petrilli's disclosure reads directly on Claim 16 of the present invention.

Petrilli et al., further discloses that the handle is a flexible strap (see Figure 1). Petrilli's disclosure read directly on Claim 17 of the present invention.

Petrilli et al., further discloses that the releasable fastener includes first fastener halves attached to the pouch and cover and wherein the handle includes second fastener halves whereby the handle may be interposed between the releasable fastener

with the first fastener half of the pouch releasably attached to a second fastener half of the handle and the remaining second fastener half of the handle releasably attached to the first fastener half of the cover (see Figure 2). Petrilli's disclosure reads directly on Claim 18 of the present invention.

Petrilli et al., still further discloses that the releasable fastener is a fabric hook and loop fastener (see Figure 1). Petrilli's disclosure reads directly on Claim 19 of the present invention.

Finally, Petrilli et al., discloses that the fire shelter system includes a secondary rigid protective sleeve holding a folded emergency fire shelter sealed in the protective envelope (see Figure 1, (16)). Petrilli's disclosure reads directly on Claim 20 of the present invention.

Response to Arguments

2. Applicant's arguments filed on 1/18/06 have been fully considered but they are not persuasive and moot in view of the new ground(s) of rejection.

Applicant argues that claim 15 as amended which includes structure recited from the parent case App. No. 10/286,172, now U.S. Pat. No. 6,881,506, should provide sufficient basis to make amended claim 15 allowable in the present application. This is not persuasive.

While Applicant amended claim 15 to include functional language, "for a person to gain access to the fire shelter," to describe the purpose of the opening in the floor of the shelter, this amendment does not include any patentable subject matter and does not overcome the original rejection. Petrilli discloses that the shelter has an opening in

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the bottom and that it is large enough for a fire fighter (Petrilli, Column 1, lines 16-18). Applicant also amended claim 15 to further define "semi-capsular" as "having a main body shaped like a half cylinder and two ends shaped like $\frac{1}{4}$ spheres." Petrilli as modified by Huddle, discloses that the main body of the shelter can be half cylinder shaped and that the ends can be shaped like $\frac{1}{4}$ spheres. Further, claims 16-20 are rejected as being dependent on rejected claim 15. Therefore, Applicant has not provided a sufficient basis to have the invention considered for allowance.

Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Hilbert reference (U.S. Pat. No. 6,192,633) is cited for

illustrating a protective shelters having an oval floor and a semi-capsular shape. The Koseberg reference (U.S. Pat. No. 5,447,227) is cited to illustrate a pouch and it's various components including a cover, a releasable fastener, a protective envelope and a secondary rigid protective sleeve.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SBP 3/22/06
SBP


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APPROVED FOR ENTRY

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FIG. 2